

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CM REGENT INSURANCE COMPANY	:
a/s/o NORTHWEST AREA SCHOOL	:
DISTRICT	:
	:
Plaintiff,	:
	:
	Civil Action No. _____
v.	:
TACONY CORPORATION,	:
	:
Defendant	:

COMPLAINT

Plaintiff, CM Regent Insurance Company, as subrogee of Northwest Area School District, by way of Complaint hereby avers as follows:

PARTIES

1. Plaintiff, the CM Regent Insurance Company, (“CM REGENT”) is an insurance company doing business in the Commonwealth of Pennsylvania, with a principal place of business located at 300 Sterling Parkway, Suite 100, Mechanicsburg, PA 17050 and is the insurer of the properties owned by the Northwest Area School District, located at 243 Thorne Hill Road, Schickshinny, PA 18655.

2. Defendant, Tacony Corporation (“TACONY”) is a corporation formed in the State of Missouri, with a principal business address at 1760 Gilsinn Lane, Fenton, MO 63026.

JURISDICTION

3. Jurisdiction in this case is based on diversity of citizenship of the parties and the amount in controversy. Plaintiff is an insurance company with a principal place of business in the Commonwealth of Pennsylvania. Defendant is a corporation formed under the laws of the State of Missouri. The amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

BACKGROUND

4. On or about August 8, 2018, a fire occurred in the Middle School/High School building of the Northwest Area School District, located at 243 Thorne Hill Road, Schickshinny, PA 18655.

5. The fire has been determined to have originated from a Tenant-branded Air Mover with Model No.: 6142777 and Serial Number 0915100088.

6. The subject Air Mover was in use at the time as part preparations for the coming school opening for the new school year.

7. The subject Air Mover was manufactured by Tacony Corporation.

8. The subject fire destroyed a significant portion of the area in the building as well as school property.

9. As a result of the aforementioned fire, the Northwest Area School District filed an insurance claim with plaintiff, CM Regent, for the significant property damage caused by the fire.

10. As a result of this claim, the plaintiff sustained damages in the amount of \$3,805,055.91 in payments for the repair and restoration of the school building, repair and replacement of damage business personal property.

11. As a result of these payments, CM Regent, as subrogee of Northwest Area School District, seeks to recover the aforementioned damages, owing to the defendant's, negligence, breaches of contract and warranty.

COUNT I
NEGLIGENCE

12. Plaintiff repeats the allegations set forth above in paragraphs 1 to 11, as though set forth herein at length.

13. Defendant, Tacony, is now and at all times mentioned in this Complaint, in the business of designing, manufacturing, assembling, marketing and selling, among others, the subject Tenant-branded Air Mover.

14. On August 18, 2018, a fire occurred at the building insured by plaintiff, CM Regent.

15. The fire was found to have originated from the Tenant-branded Air Mover with Model No.: 6142777 and Serial No.: 0915100088 that is the subject of this action.

16. The subject Air Mover was manufactured by defendant, Tacony Corporation.

17. All other potential sources ignition with in the area of origin were eliminated.

18. At all times mentioned in this complaint, defendant, Tacony, so negligently and carelessly designed, manufactured, inspected, marketed and sold the said Air Mover that it was dangerous and unsafe for its intended use.

19. Plaintiff alleges that the incident subject to this Complaint would not have occurred but for the negligence of the defendant.

20. Plaintiff cannot more specifically allege the acts of negligent design, manufacture, and inspection on the part of Tacony, for the reason that facts in that regard are peculiarly within the knowledge of defendant manufacturer and its agents.

21. As a direct and proximate result of the defendant's negligence and carelessness as described above, CM Regent's insured was forced to have extensive repair and restoration work done to building, repair and replace substantial business personal property, and substantially delay the opening of the affected portion of the building for the new school year.

22. By reason of the foregoing, plaintiff, CM Regent suffered damages in the amount of \$3,805,055.91, together with interest and costs of this action, to which they are subrogated.

WHEREFORE, plaintiff, the CM Regent Insurance Company a/s/o Northwest Area School District, demands judgment in its favor and against defendant, Tacony Corporation, in the amount of \$3,805,055.91 together with the costs of this action, and any other relief this Court may deem just and proper.

COUNT II
STRICT PRODUCTS LIABILITY

23. Plaintiff repeats the allegations set forth above in paragraphs 1 to 22, as though set forth herein at length.

24. At all times mentioned in this Complaint, the aforementioned Tacony-manufactured Air Mover was defective as to design and manufacture, in that the wirings within the machine were installed in such a way that caused them to fail and short circuit and ignite causing the fire.

25. At all times relevant to this Complaint, the Tacony-manufactured Air Mover and its component parts were defective as to design and manufacture at the time it left the manufacturing facility of Tacony.

22. Under the circumstances then and there existing, the subject Tacony-manufactured Air Mover was unsafe for its intended use for the reason that the machine had caused an unreasonably dangerous condition.

23. CM Regent's insured was not aware of the dangerous condition of the machine prior to or at the time of use of the subject Air Mover.

24. On August 18, 2018, CM Regent's insured, used the Air Mover in a manner and for the purpose the defendant had intended and as a proximate result of its use, the product caused plaintiff to suffer the aforementioned damages.

25. As a direct and proximate result of the defect in the defendant's product, a fire resulted and CM Regent's insured was forced to have extensive repair and restoration work done to the building, repair and replacement of substantial business personal property, and delay the opening of the section of the school building for the new school year.

26. By reason of the foregoing, plaintiff, CM Regent suffered damages in the amount of \$3,805,055.91, together with interest and costs of this action, to which they are subrogated.

WHEREFORE, plaintiff, the CM Regent Insurance Company a/s/o Northwest Area School District, demands judgment in its favor and against defendant, Tacony Corporation, in the amount of \$3,805,055.91 together with the costs of this action, and any other relief this Court may deem just and proper.

COUNT III
BREACH OF WARRANTY

27. Plaintiff repeats the allegations set forth above in paragraphs 1 to 26, as though set forth herein at length.

28. Defendant, Tacony, expressly and/or impliedly warranted that the Tacony-manufactured Air Mover was safe and fit for the purpose intended when used under ordinary conditions and in an ordinary or foreseeable manner.

29. The fire of August 18, 2018 and the consequent damage sustained by CM Regent's insured was caused by Tacony's breach of such express and/or implied warranties.

30. As a direct and proximate result of the defect in the defendant's product, a fire resulted and CM Regent's insured was forced to have extensive repair and restoration work done to the building, repair and replacement of substantial business personal property, and delay the opening of the section of the school building for the new school year.

31. By reason of the foregoing, plaintiff, CM Regent suffered damages in the amount of \$3,805,055.91, together with interest and costs of this action, to which they are subrogated.

WHEREFORE, plaintiff, the CM Regent Insurance Company a/s/o Northwest Area School District, demands judgment in its favor and against defendant, Tacony Corporation, in the amount of \$3,805,055.91 together with the costs of this action, and any other relief this Court may deem just and proper.

CRAWFORD & McELHATTON

By: *s/Dennis J. Crawford*

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